Legislative Services Agency

MINUTES

Medical Malpractice Study Committee

November 7, 2005

MEMBERS PRESENT:

Senator Bob Brunkhorst, Co-chairperson
Senator Keith Kreiman, Co-chairperson
Senator Nancy Boettger
Senator Michael Connolly
Senator William Dotzler, Jr.
Senator Ron Wieck

Representative Kraig Paulsen, Co-chairperson
Representative Clarence Hoffman
Representative Lance Horbach
Representative Pam Jochum
Representative Jo Oldson

MEETING IN BRIEF

Organizational staffing provided by: Rachele Hjelmaas, Legal Counsel, (515) 281-8127

Minutes prepared by: Ann Ver Heul, Legal Counsel, (515) 281-3837

I. Procedural Business.

II. Introductory Comments.

III. Iowa Insurance Division — Ms. Susan E. Voss and Ms. Ramona Lee.

IV. Midwest Medical Insurance Company — Mr. David Bounk and Ms. Libby Lincoln.

V. Iowa Medical Society — Ms. Karla Fultz McHenry and Mr. Keith Luchtel.

VI. Iowa Department of Public Health — Ms. Lucia D'Hooge; Iowa Hospital Association — Mr. Greg Boattenhamer.

VII. Committee Discussion and Recommendations.

VIII. Materials Filed With the Legislative Services Agency.

Procedural Business.

Call to Order. Co-chairperson Brunkhorst called the second and final meeting of the Medical Malpractice Study Committee to order at 9:11 a.m. on Monday, November 7, 2005, in Room 22 of the State Capitol Building.

Minutes. The minutes of the previous meeting of the Committee on October 5, 2005, were approved on a voice vote.

Recess and Adjournment. The Committee recessed at 12:30 p.m. for lunch. The Committee reconvened at 1:52 p.m. and recessed for caucuses. The Committee reconvened at 2:08 p.m. and recessed for caucuses at 2:30 p.m. The Committee reconvened at 2:53 p.m. and adjourned at 3:03 p.m.

I. Introductory Comments.

Co-chairperson Brunkhorst stated that the Committee's agenda for the day would be to hear presentations, hold brainstorming discussions and caucuses to hone in on the issues, and agree on Committee recommendations.

II. Iowa Insurance Division — Ms. Susan E. Voss and Ms. Ramona Lee.

Overview. Ms. Susan E. Voss, Iowa Commissioner of Insurance, was accompanied by Ms. Ramona Lee, an actuarial administrator from the Insurance Division. Ms. Voss distributed a memorandum to the Committee providing information that the Committee requested her to obtain at its previous meeting on October 5, 2005, and discussed the information presented.

Use of Surplus Income in Ratemaking. The Committee discussed the role of income from surplus in the medical malpractice insurance industry and whether surplus income of insurers doing business in Iowa is excessive or not. The Committee discussed the need for data to show whether surplus income is increasing or decreasing. Ms. Voss stated that if the ban on use of surplus income for certain purposes contained in Code section 515F.4 is removed, there might be a minor decrease in premium rates. She offered to propose legislation removing the provision to see what happens.

Insurer Claims/Settlements/Lawsuit Data. Ms. Voss explained that the memorandum includes data from three insurance carriers doing business in Iowa concerning claims, settlements, and lawsuits for 2000-2005. Ms. Voss indicated that the data shows a clear decrease in claims and lawsuits but she does not know why.

Ms. Voss stated that data showing claims filed and claims settled may not add up because payouts on claims rarely occur in the same year the claims are made. She stated that she does not have information on how many policies each insurer writes each year.

Angoff Study. The Committee discussed information presented at the previous meeting by Mr. Jay Angoff suggesting that profits of medical malpractice insurance carriers in Iowa are

twice the national average. Members of the Committee discussed their views concerning the merits or flaws of Mr. Angoff's study and its conclusions.

Ms. Voss responded that she is not certain where Mr. Angoff obtained his data, but she does not believe it is reflective of what is actually happening in Iowa. Ms. Lee added that profit margins expressed in National Association of Insurance Commissioners' (NAIC) reports are not overall profits and leave out information. Ms. Lee stated that medical malpractice insurance in Iowa is not profitable for carriers if all factors are considered, although it may be better than other places in the nation. Ms. Lee stated that Mr. Angoff's study has been criticized by the American Academy of Actuaries as not being actuarially sound. She gave examples of information in the study that, in her opinion, is misleading or faulty.

Ms. Voss indicated her office would look at the NAIC data and the data used by Mr. Angoff and prepare a response to Mr. Angoff's study for the Committee, including comments about the study from the American Academy of Actuaries.

Rate Increase Review and Approval. Ms. Voss and Ms. Lee explained the rate increase approval process in Iowa. Ms. Voss said that there is no requirement for public notification of requests for rate increases before rate increases are approved but prior approval by the Insurance Commissioner is necessary before a rate increase goes into effect. Ms. Voss stated that public notification of rate increase requests could be required, but it would lengthen the time before a rate increase could be approved.

Ms. Lee indicated that review of requests for medical malpractice rate increases requires more depth than for other types of insurance but is still usually completed within 10 days. She stated that documentary support is required and every exhibit submitted by an insurer in support of its request is checked for reasonableness allowing a little for profit, using standard actuarial principles.

Ms. Voss stated that the Insurance Division interprets Code section 515F.5 to require prior approval before a rate increase goes into effect. The Committee discussed whether the language of that statute should be changed to make it clear that a rate filing does not automatically go into effect if not disapproved.

Expansion of Market in Iowa. Ms. Voss stated that it has been hard for the Insurance Division to come up with incentives to encourage insurers to start doing business in the state. She said that she has been encouraging discussion between the stakeholders involved such as the Iowa Medical Society and trial lawyers.

Malpractice Rates in the Midwest. Ms. Voss presented information about the average yearly rates for medical malpractice insurance coverage for three specialties (internal medicine, general surgery, and obstetrics/gynecology) in six midwestern states. Committee discussion focused on the fact that rates in Minnesota are substantially lower than in Iowa.

Ms. Voss responded that in 2002 the Insurance Division held a series of meetings to try to ascertain why this is true. She stated that Minnesota requires certificates of merit to file a

medical malpractice lawsuit, has some different evidentiary rules than Iowa, and seems to have a different culture about medical malpractice claims resolution than Iowa. She said that Illinois recently enacted a number of medical malpractice reforms, so that state should be watched to see the effect of the reforms on rates there.

The Committee discussed options to attempt to lower rates in Iowa, such as prior public notice of rate increase requests and allowing protests of rate increases, refunds to doctors who are overcharged, modifying reserve requirements, waiving premium taxes on new policies for two years, a patient compensation fund for noneconomic damages over $1 million, revision of the formula used to determine rates, and imposing a statutory limit on insurance company profits.

III. Midwest Medical Insurance Company — Mr. David Bounk and Ms. Libby Lincoln.

Overview. Mr. David Bounk, President and CEO, and Ms. Libby Lincoln, General Counsel, Midwest Medical Insurance Company (MMIC), told the Committee about their company, which writes medical malpractice insurance in the state.

Ms. Lincoln said that MMIC was started in Minnesota 25 years ago and is a stock company wholly owned and governed by physician-policyholders. She stated that the company entered the Iowa market in 1993 when it merged with Iowa Physicians Mutual Insurance Trust, an Iowa physician-owned company. Ms. Lincoln opined that the Angoff study has flaws in methodology. She also opined that the legal culture in Minnesota is very different from Iowa.

Minnesota Market. Mr. Bounk discussed differences between the Iowa and Minnesota markets. He stated that MMIC uses the same independent actuary for all states in which it does business. He said that in Iowa claim frequency and payout is higher, adjustment expenses are higher with more formal discovery, and the percentage of claims closed without indemnity is higher than in Minnesota. He said that other factors are about the same in Iowa and Minnesota.

He noted that frequency of claims is down in Iowa and MMIC is reducing 2006 rates. He said that it is not true that 5 percent of physicians generate 90 percent of claims, but it is true that the majority of claims come from certain doctors as a function of the risk associated with their specialty. He noted that a recent $10.2 million verdict in Iowa for negligent credentialing by a hospital will have a big impact on rates if it is not overturned on appeal.

Committee Discussion. The Committee further discussed how Minnesota is different than Iowa. Ms. Lincoln said that claims frequency is still very good in Iowa compared to the rest of the nation. Mr. Bounk stated that Minnesota is unique but he does not know why.

Suggested Reforms. The Committee discussed what else could be done in Iowa to reduce rates, such as publishing hospital infection rates and encouraging or requiring physicians to

do more risk management to reduce errors. Ms. Lincoln stated that MMIC supports requiring publication of hospital infection rates, which was recently enacted in Minnesota, but it is too soon to tell whether the requirement will affect rates there. Ms. Lincoln added that Iowa physicians are already using quality control, but that it is easier to implement in technical specialties like anesthesiology than in cognitive specialties.

Ms. Lincoln stated that MMIC also supports certificates of merit and pocket filings or standstill agreements where the statute of limitations is temporarily stopped during investigation of a claim. She said that in Minnesota 68 percent of cases come in as claims, not lawsuits, while the situation is almost reversed in Iowa.

Ms. Lincoln noted that Minnesota does not have a formal limit on the use or number of experts. She reiterated that higher frequency and severity of claims, as well as the process here, makes rates higher in Iowa. She suggested that the Iowa Medical Society (IMS) liability group is providing useful ideas for reform in Iowa.

Mr. Bounk stated that reserves are kept for several years to wait for claims to come in. He opined that Iowa has quite a bit of competition for medical malpractice insurance and that Iowa has a regulatory climate that is stricter than Minnesota because Iowa requires prior approval of rates. He noted that Illinois has mandated public hearings on rates with no effect. Mr. Bounk indicated that MMIC would not support publication of proposed rates because that might give a competitor an advantage in setting its rates.

Request for Data. Ms. Lincoln told the Committee that she would provide requested information to them about the average length of time for claim resolution with MMIC, and would prepare an analysis comparing the resolution process of claims and lawsuits between Iowa and Minnesota.

IV. Iowa Medical Society — Ms. Karla Fultz McHenry and Mr. Keith Luchtel.

Overview. Ms. Karla Fultz McHenry, Vice President, Public Policy and Advocacy, and Mr. Keith Luchtel, Legislative Counsel, Iowa Medical Society (IMS), told the Committee about the perspective of IMS on tort and medical liability reform in the state. Ms. McHenry opined that Iowa is better positioned than many other states due to tort reforms enacted from 1977-1997.

Liability Work Group. Ms. McHenry stated that IMS has instituted a liability workgroup to propose additional reforms such as certificates of merit, nonadmissibility of physician apologies to patients, and standstill agreements which set aside the statute of limitations while claims are being investigated. She said that the workgroup has basically agreed to a standstill agreement but is still working to reach agreement on requiring a certificate of merit. She stated that the group is also working to revise the 1993 Principles of Cooperation for physicians and lawyers and to reduce the cost of obtaining and providing medical records.

Ms. McHenry opined that the workgroup is making progress and does not need assistance from the General Assembly at this time. The Committee indicated their willingness to help facilitate that progress and to be involved in the process of proposing tort reform legislation.

Ms. McHenry stated that IMS does not support creation of a patient compensation fund or a medical error reporting law. She said that Iowa health care providers are already working on patient safety and quality of care issues.

IMS Endorsements. Senator Connolly asked about the relationship between IMS and malpractice insurers doing business in the state and expressed concern that IMS may have a conflict of interest in advocating for lower premium rates when it receives revenue from those insurers. Ms. McHenry responded that IMS does receive revenue not obtained from dues, from insurers in return for providing endorsements. Mr. Luchtel commented that the Commissioner of Insurance is the watchdog of the insurance industry in the state and he noted that MMIC opined that Iowa has a stricter regulatory climate than Minnesota.

V. Iowa Department of Public Health — Ms. Lucia D'Hooge; Iowa Hospital Association — Mr. Greg Boattenhamer.

Overview. Ms. Lucia D'Hooge, Iowa Department of Public Health, stated that the Iowa Department of Public Health is conducting projects at the state level involving instilling a patient safety culture for hospital surgery and participating in the Iowa Health Care Collaborative on Patient Safety with IMS and the Iowa Hospital Association (IHA). Mr. Greg Boattenhamer, Senior Vice President of Government Relations, IHA, said that Iowa has the sixth best health care system in the nation based on a survey of quality indicators. He said that the collaborative will issue a report in December which will be provided to the General Assembly.

Discussion. There was Committee discussion concerning why Iowa has more malpractice claims per physician that are more severe than Minnesota and whether there should be requirements that medical errors and infection rates be published. Mr. Boattenhamer responded that IHA is opposed to such publication of data because it is subject to misinterpretation and it is difficult to define what is an "error."

Mr. Boattenhamer was asked whether IHA would agree that if statistics five years from now do not indicate a decrease in the severity of malpractice claims in Iowa, voluntary efforts to increase the quality of patient care in the state are not working. He opined that indicators of the quality of patient care will be the parameters for medical malpractice liability in the future and that Iowa health care providers need to meet those indicators.

VI. Committee Discussion and Recommendations.

Following party caucuses and Committee discussion, the Committee made 10 recommendations addressing the following topics with the understanding that the Co-chairpersons will finalize the language of the recommendations, circulate them for comment

by the Committee, and make any necessary revisions to the recommendations prior to approval of the Committee's final report:

1. Incent physicians and other health care providers to increase efforts to reduce medical errors.
2. Give use immunity to health care providers who say "I'm sorry."
3. Allow the statute of limitations in a medical malpractice lawsuit to be stayed by agreement of the parties.
4. Require insurance claims and income data from medical malpractice insurers.
5. Revise expert witness standards and limit the number of experts in a specialty area. Ensure medical records are accessible as soon as possible.
6. Provide a state tax credit to assist in paying medical malpractice costs of specialty physicians in physician shortage areas of the state.
7. Require criminal background checks (state and federal checks) for licensing new health care providers.
8. Include a provision in new legislation requiring a study of the effectiveness of the legislation, to sunset in three to five years.
9. Require a certificate of merit to be issued before the filing or continuation of a medical malpractice lawsuit.
10. Consider a medical error reporting system, including an aggregate reporting system.

VII. Materials Filed With the Legislative Services Agency.

The items listed below were distributed at or in connection with the November 7 meeting and are filed with the Legislative Services Agency. The materials may be accessed from the "Additional Information" link on the Committee's Internet page:

http://www.legis.state.ia.us/aspx/Committees/Committee.aspx?id=72.

1. 11/1/05 Memo RE: Medical Information Request from Ms. Susan E. Voss.
2. 11/7/05 The Midwest Medical Insurance Company Group.
3. 11/7/05 Midwest Medical Insurance Company Statement of Income Physician Business Only.
4. 11/7/05 Medical Malpractice Study Committee — Iowa Medical Society.
5. 11/7/05 Physician Apology "I'm Sorry" Exclusions — Iowa Medical Society.
6. 11/7/05 IHA Legislative Position 2006 Hospital Quality.

7. 11/7/05 Minnesota Department of Health Patient Safety — Adverse Health Events in Minnesota.
8. 11/7/05 Three-Year Medical Malpractice Case Filings in District Court.
9. 7/22/05 Congress of the United States — Joint Economic Committee — Medical Malpractice Misinformation.
10. 8/30/05 Comments on Report by Mr. Jay Angoff — "Falling Claims and Rising Premiums in the Medical Malpractice Insurance Industry."
11. 10/13/05 Profitability in Medical Professional Liability Insurance.
12. 10/11/05 The Clarion-Ledger Mississippi News "Doctors' Insurance Rates Fall."
13. 11/07/05 Memorandum RE: Judicial Branch Medical Malpractice Statistics.
14. 11/7/05 Medical Malpractice Interim Committee Brainstorming List.

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